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January 26, 2007

Christina M. Wise
Property Tax Director
Stark County Auditor
110 Central Plaza South
Suite 220
Canton, OH 44702-1410

**Re: CAUV Program
Our File No. M101.00296**

Dear Christina:

You have asked our office two questions regarding landowners previously involved in the C.A.U.V. program who fail to file their renewal application. From our telephone discussions, I understand your questions to be the following:

1.) When a landowner submits the renewal application to you (or the information that is required by the renewal application) *after* receiving their denial letter, can your office submit that information to the board of revision absent the landowner filing a complaint?

2.) May your office send out a warning letter to individuals who have not submitted their renewal application, informing them that their failure to do so by April 1st will result in a conversion determination and possibly a recoupment? This letter would be sent prior to the conversion and the denial letter that is sent to them.

With regard to your first question, the law governing conversion of land due to a landowner's failure to file a renewal application is clear. Revised Code Section 5713.31(B)(1) states that:

"Conversion of land devoted exclusively to agricultural use" means any of the following:

The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a

renewal application under section 5713.31
of the Revised Code without good cause
as determined by the board of revision.

According to R.C. §5713.31, the landowner must submit the renewal application "prior to the first Monday of April of the current year." Further, in 1986 WL 28167 (Ohio Bd. Tax App.), the Board of Tax Appeals held that:

Where one does not file a renewal application
as required by R.C. §5713.31 to continue the
C.A.U.V. status assigned his real property,
said failure, by statute (R.C. 5713.30)
constitutes a 'conversion' of land previously
deemed devoted exclusively to agricultural use
and, *by operation of law*, the C.A.U.V. status
of that property is forfeited and the county auditor
is required to value the subject real property
for tax purposes at its true value in money.

Therefore, the failure of a landowner who has been in the C.A.U.V. program to submit a renewal application by the first Monday in April automatically constitutes a conversion, and there is no discretion to say otherwise. Once a conversion is made and a denial letter is sent, the landowner must file a complaint with the board of revision to show good cause why the renewal application was not filed.

Once conversion has occurred, R.C. §5713.351 provides the procedure for challenging the conversion.

If the county auditor has determined under section 5713.35 of the Revised Code that a conversion of land has occurred with respect to any tract, lot, or parcel on the agricultural land tax list because of a failure to file an initial or renewal application fee, and if the auditor, upon application of the owner of a twenty-five dollar fee, finds that the land would be land devoted exclusively to agricultural use for the current year if the board of revision finds the failure arose for good cause, *the owner may file a complaint against that determination with the board as provided in 5715.19 of the Revised Code on the grounds that the tract, lot or parcel is land devoted exclusively to agricultural use because there*

was good cause for the owner's failure to file an initial or renewal application. If the board finds that there was such good cause, the application under this section shall be considered an application that was properly filed under section 5713.31 of the Revised Code.

R.C. §5715.19(A) (1) (b) requires the complaint to be filed "...on or before the thirty-first day of March of the ensuing year or the date of closing of the collection for the first half of real and public property taxes for the current year, whichever is later."

These Revised Code sections mandate that the procedure for a landowner wishing to challenge a conversion of their C.A.U.V. status for failure to file a renewal application is through a complaint with the board of revision. This is, of course, after your office makes a determination that the land would be devoted exclusively to agricultural use had the renewal application been filed. The question for the board of revision is primarily one of whether the landowner had good cause why they could not file their renewal application on time. There is no other procedure outlined in the Revised Code for a determination of conversion to be challenged once it is made. Therefore, I do not believe that you are authorized by law to submit information or renewal applications informally to the board of revision outside of the process outlined above.

With respect to your second question asking whether you may send out a warning letter prior to the first Monday in April when conversion occurs informing the individual that their failure to file the renewal application by the deadline will result in a conversion and potentially recoupment, the Revised Code is silent. Unlike your first question, such a letter would not affect the rights or property interest or values of landowners in any way. Therefore, this appears to be a policy decision that the office could implement if you choose to. As with all policy decisions, this should be made by your office. However, I found nothing preventing you from sending out such letters if you decide to do so.

Should you have any further questions or concerns regarding this matter, please feel free to contact me at any time.

Sincerely,


Lisa J. Bart

Assistant Prosecuting Attorney